

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JEFFREY FRANK KLEIN,

Case No. 14-1050

Plaintiff,

v.

THIRD AMENDED COMPLAINT

COMMERCE ENERGY, INC.
D/B/A JUST ENERGY, a California
Corporation, and COLLECTCENTS, INC.
o/a CREDIT BUREAU OF CANADA
COLLECTIONS, a Foreign Corporation,

Defendants.

Filed on Behalf of Plaintiff, Jeffrey
Frank Klein

Counsel of Record
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THIRD AMENDED COMPLAINT

JURIDICTIONAL ALLEGATIONS

1. Plaintiff, Jeffrey Frank Klein ("Plaintiff") is domiciled in the Borough of Homestead, Commonwealth of Pennsylvania and a legal resident of the Commonwealth of Pennsylvania.

2. Defendant Commerce Energy Group, Inc. d/b/a Just Energy ("Commerce Energy") is, upon information and belief, a corporation organized and existing under the laws of the State of California.

3. Defendant CollectCents, Inc., o/a Credit Bureau of Canada Collections ("CollectCents") is a Foreign Corporation located in the Country of Canada.

4. CollectCents is actively conducting business in the Commonwealth of Pennsylvania while identifying itself as "Just Energy" or some variation of that name.

5. Commerce Energy is actively conducting business in the Commonwealth of Pennsylvania.

6. This action involves a federal question.

7. The parties hereto have diversity of citizenship.

8. The amount in controversy exceeds \$75,000.00.

9. Venue is proper in this Court.

GENERAL ALLEGATIONS

10. At all relevant times, Plaintiff was a subscriber to Google's Voice service, Voice over IP ("VoIP") service.

11. Plaintiff's telephone number with respect to the Google Voice account is 419-359-0702 (the "Voice Number").

12. Incoming calls to the Voice Number are delivered to Plaintiff's mobile cellular telephone.

13. In early 2013, Plaintiff began receiving telephone calls to the Voice Number, purportedly for the purpose of collecting a debt owed to Commerce Energy by a person known as Phyllis M. Settles (the "Calls"), a person Plaintiff does not know or have any relationship with.

14. CollectCents made the Calls on behalf of Commerce Energy in an attempt to collect a debt owed to Commerce Energy.

15. The CollectCents caller identified his or her self to Plaintiff as “Just Energy” or some variation of that name.

16. CollectCents made over 200 harassing calls to the Voice Number on behalf of Commerce Energy and/or Just Energy Group, despite Plaintiff’s demands to cease such calls.

17. Plaintiff suffers from depression and anxiety.

18. The 200+ harassing calls to the Voice Number caused or exacerbated Plaintiff’s depression and anxiety as further described below.

19. Plaintiff has suffered damages, including significant stress, anger aggravation and inconvenience.

20. The conduct in which CollectCents engaged as alleged in this Complaint was performed with the authorization of, and in concert with, Commerce Energy.

**COUNT I – VIOLATION OF 47 USC § 227
TELEPHONE CONSUMER PROTECTION ACT (“TCPA”)
Plaintiff v. CollectCents, Inc., o/a Credit Bureau of Canada Collections**

21. Plaintiff incorporates all previously pled allegations plead herein.

22. The Calls were placed by CollectCents, its agents, servants and/or employees, acting in the course of and within the scope of their employment with CollectCents.

23. The placement of Calls to Plaintiff, as set forth above, violated the TCPA.

24. Based upon the foregoing, Plaintiff is entitled to statutory damages pursuant to the TCPA.

25. Google Voice and VoIP services constitute a paging service, cellular telephone service, specialized mobile radio service or other common carrier service for which the called party is charged for the call.

26. CollectCents utilized an automatic telephone dialing system to place calls to the Plaintiff's Voice Number.

27. Voicemail messages left subsequent to many of the calls utilized an artificial or prerecorded voice.

28. CollectCents failed to identify itself or the telephone number of the business placing the Calls.

29. The Calls were placed either from the number 877-407-7575 or from a blocked number.

30. In September, 2013, and again in late December or early January, 2014, Plaintiff notified CollectCents that he was not associated with Phyliss M. Settles, that it has the wrong phone number, and demanded that the calls cease.

31. Representatives of CollectCents acknowledged their understanding of the cease and desist demands.

32. Despite Plaintiff's demands, the Calls continued, increasing in frequency.

33. In total, Plaintiff estimates that he has received over 200 Calls, all in violation of the TCPA.

34. CollectCents' violations of the TCPA were willful and knowing and would be considered extreme and outrageous to a reasonable person.

35. As a direct and proximate result of the Calls, Plaintiff suffered damages including mental distress, inconvenience, outrage, anger, aggravation, frustration,

anxiety, and physical and mental distress as manifested by symptoms including aggravation of his depression and anxiety conditions, dysphoria, loss of sleep, hypersomnia, fatigue, inability to concentrate, difficulty performing essential work/school functions, racing heart, headaches and tension.

WHEREFORE, Plaintiff, Jeffrey Frank Klein, demands that this Court enter judgement in his favor and against Defendant CollectCents, Inc. d/b/a Just Energy for the following:

- a) Damages in excess of \$75,000.00;
- b) An injunction prohibiting CollectCents from ever contacting Plaintiff;
- c) All Statutory damages available under the TCPA, including treble damages;
- d) Punitive damages;
- e) Attorney's fees;
- f) Court costs;
- g) Pre-judgment and post judgment interest; and,
- h) For such other relief as may be just and proper.

**COUNT II – COMMON LAW INVASION OF PRIVACY –
INTRUSION UPON SECLUSION**

Plaintiff v. CollectCents, Inc., o/a Credit Bureau of Canada Collections

36. Plaintiff incorporates all previously pled allegations plead herein.

37. The Calls were placed by CollectCents, its agents, servants and/or employees, acting in the course of and within the scope of their employment with CollectCents.

38. CollectCents engaged in a campaign to harass Plaintiff.

39. The 200+ Calls were a wrongful intrusion into Plaintiff's private activities in such a manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities.

40. The Calls caused Plaintiff to become highly upset, nervous and apprehensive.

41. As a direct and proximate result of the Calls, Plaintiff suffered damages including mental distress, inconvenience, outrage, anger, aggravation, frustration, anxiety, and physical and mental distress as manifested by symptoms including aggravation of his depression and anxiety conditions, dysphoria, loss of sleep, hypersomnia, fatigue, inability to concentrate, difficulty performing essential work/school functions, racing heart, headaches and tension.

42. Due to the willful and reckless nature of CollectCents' intrusion upon Plaintiffs' seclusion, Plaintiff is entitled to compensatory damages, punitive damages and damages for emotional distress.

WHEREFORE, Plaintiff, Jeffrey Frank Klein, demands that this Court enter judgement in his favor and against Defendant CollectCents, Inc. d/b/a Just Energy for the following:

- a) Damages in excess of \$75,000.00;
- b) An injunction prohibiting CollectCents from ever contacting Plaintiff;
- c) Punitive damages;
- d) Attorney's fees;
- e) Court costs;

- f) Pre-judgment and post judgment interest; and,
- g) For such other relief as may be just and proper.

COUNT III – NEGLIGENCE

Plaintiff v. CollectCents, Inc., o/a Credit Bureau of Canada Collections

43. Plaintiff incorporates all previously pled allegations plead herein.

44. The Calls were placed by CollectCents, its agents, servants and/or employees, acting in the course of and within the scope of their employment with CollectCents.

45. CollectCents had a duty to Plaintiff to take reasonable steps to ensure that calls it makes with respect to collecting a debt are made to the correct telephone number, including actively monitoring calls for obvious signs that it might be placing calls to a wrong number, e.g. a male's voice answering when the intended recipient is a female, limiting the time period over which calls are made, and escalating non-responsive calls to a higher level of supervision in order to further investigate irregularities.

46. CollectCents had a duty to Plaintiff to immediately and permanently remove his name from its call list, database, automatic telephone dialing system or other type of contact database when it or its agents, servants or employees are advised they had been calling the wrong number.

47. CollectCents breached those duties by continuing to place Calls to the Voice Number after Plaintiff demanded they cease and desist any further calls to Plaintiff.

48. As a direct and proximate result of the Calls, Plaintiff suffered damages including mental distress, inconvenience, outrage, anger, aggravation, frustration,

anxiety, and physical and mental distress as manifested by symptoms including aggravation of his depression and anxiety conditions, dysphoria, loss of sleep, hypersomnia, fatigue, inability to concentrate, difficulty performing essential work/school functions, racing heart, headaches and tension.

WHEREFORE, Plaintiff, Jeffrey Frank Klein, demands that this Court enter judgement in his favor and against Defendant CollectCents, Inc. d/b/a Just Energy for the following:

- a) Damages in excess of \$75,000.00;
- b) An injunction prohibiting CollectCents from ever contacting Plaintiff;
- c) Punitive damages;
- d) Attorney's fees;
- e) Court costs;
- f) Pre-judgment and post judgment interest; and,
- g) For such other relief as may be just and proper.

**COUNT IV – VIOLATION OF 47 USC § 227
TELEPHONE CONSUMER PROTECTION ACT ("TCPA")
Plaintiff v. Commerce Energy, Inc., d/b/a Just Energy**

49. Plaintiff incorporates all previously pled allegations plead herein.

50. CollectCents' actions as described above were performed during the course and within the scope of its employment or agency relationship as the debt collection agency for Commerce Energy.

51. Commerce Energy had apparent authority over CollectCents' conduct and ratified such conduct.

52. CollectCents' actions were performed with the purpose of serving its employer, Commerce Energy, who at all times exercised control over, or had the right to control, its activities and conduct.

53. Commerce Energy, although not the entity who physically placed the Calls, is liable to Plaintiff under the TCPA for calls placed on its behalf by its third party collection agent.

WHEREFORE, Plaintiff, Jeffrey Frank Klein, demands that this Court enter judgement in his favor and against Defendant CollectCents, Inc. d/b/a Just Energy for the following:

- a) Damages in excess of \$75,000.00;
- b) All Statutory damages available under the TCPA, including treble damages;
- c) Punitive damages;
- d) Attorney's fees;
- e) Court costs;
- f) Pre-judgment and post judgment interest; and,
- g) For such other relief as may be just and proper.

COUNT V – VICARIOUS LIABILITY
Plaintiff v. Commerce Energy, Inc., d/b/a Just Energy

54. Plaintiff incorporates all previously pled allegations plead herein.

55. CollectCents' actions as described above were performed during the course and within the scope of its employment or agency relationship as the debt collection agency for Commerce Energy.

56. Commerce Energy had apparent authority over CollectCents' conduct and ratified such conduct.

57. CollectCents' actions were performed with the purpose of serving its employer, Commerce Energy, who at all times exercised control over, or had the right to control, its activities and conduct.

58. Commerce Energy is vicariously liable for CollectCents' wrongful conduct as described above.

WHEREFORE, Plaintiff, Jeffrey Frank Klein, demands that this Court enter judgement in his favor and against Defendant CollectCents, Inc. d/b/a Just Energy for the following:

- a) Damages in excess of \$75,000.00;
- b) All Statutory damages available under the TCPA, including treble damages;
- c) Punitive damages;
- d) Attorney's fees;
- e) Court costs;
- f) Pre-judgment and post judgment interest; and,
- g) For such other relief as may be just and proper.

COUNT VI – NEGLIGENCE
Plaintiff v. Commerce Energy, Inc. d/b/a Just Energy

59. Plaintiff incorporates all previously pled allegations plead herein.

60. A Seller is in the best position to monitor and police TCPA compliance by third-party debt collectors acting on its behalf because allowing the seller to avoid potential liability by outsourcing its telemarketing activities to unsupervised third parties

would leave consumers in many cases without an effective remedy for debt collection intrusions.

61. Commerce Energy has a duty to Plaintiff to ensure that persons or entities it utilizes to place debt collection calls on its behalf do so in a legal, responsible and reasonable manner, so as to avoid injury or harm to persons its agents call in connection with its debt collection activities, including Plaintiff.

62. Commerce Energy has a duty to Plaintiff conduct due diligence prior to retaining a debt collection agent to ensure that such agent complies with federal, state or local laws debt collection activities, including proper registration in any jurisdiction in which it conducts business, so as to avoid injury or harm to persons such agents call in connection with its debt collection activities, including Plaintiff.

63. Commerce Energy has a duty to Plaintiff to properly supervise any agents acting on its behalf, so as to avoid injury or harm to persons its agents call in connection with its debt collection activities, including Plaintiff.

64. Commerce Energy breached those duties through actions or failures to act as set forth above, and in allowing its agent CollectCents to place Calls to the Voice Number on its behalf after Plaintiff demanded CollectCents cease and desist any further calls to Plaintiff.

65. As a direct and proximate result of the Calls, Plaintiff suffered damages including mental distress, inconvenience, outrage, anger, aggravation, frustration, anxiety, and physical and mental distress as manifested by symptoms including aggravation of his depression and anxiety conditions, dysphoria, loss of sleep,

hypersomnia, fatigue, inability to concentrate, difficulty performing essential work/school functions, racing heart, headaches and tension.

WHEREFORE, Plaintiff, Jeffrey Frank Klein, demands that this Court enter judgement in his favor and against Defendant Commerce Energy, Inc. d/b/a Just Energy for the following:

- a) Damages in excess of \$75,000.00;
- b) All Statutory damages available under the TCPA, including treble damages;
- c) Punitive damages;
- d) Attorney's fees;
- e) Court costs;
- f) Pre-judgment and post judgment interest; and,
- g) For such other relief as may be just and proper.

Respectfully Submitted,

/s/ Adam G. Vahanian
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